

# HOUSE BILL 1318

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CF SB 953

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By: **Delegates Krysiak, Davis, and Kelly**  
Introduced and read first time: February 18, 2010  
Assigned to: Economic Matters

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Committee Report: Favorable with amendments  
House action: Amendments rejected  
Read second time: March 25, 2010

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Workers' Compensation – Death Benefits – Dependency**

3 FOR the purpose of altering the authority of the Workers' Compensation Commission  
4 to make certain determinations of dependency; altering a provision of law that  
5 specifies that certain surviving spouses and individuals are not entitled to  
6 certain death benefits; altering the provisions relating to the calculation of  
7 death benefits for individuals who are wholly or partly dependent; requiring an  
8 employer or its insurer to pay certain death benefits to certain dependents for a  
9 certain period of time; specifying the calculation of certain death benefits;  
10 specifying the minimum amount of certain death benefits; specifying the  
11 minimum amount of time for the payment of certain death benefits; providing  
12 an exception to the time limitation for certain dependents who are incapable of  
13 self-support under certain circumstances; providing for the termination of  
14 certain death benefits under certain circumstances; providing an exception to  
15 the termination of certain death benefits for certain children under certain  
16 circumstances; providing the amount of death benefits to certain dependents  
17 who are neither a dependent spouse nor a dependent child; providing for an  
18 annual adjustment in a certain manner of a certain death benefit; specifying  
19 that the Commission has continuing jurisdiction under certain circumstances;  
20 increasing the amount of certain funeral expenses that the employer or its  
21 insurer is required to pay; making stylistic changes; and generally relating to  
22 workers' compensation death benefits for dependents of covered employees.

23 BY repealing and reenacting, without amendments,  
24 Article – Labor and Employment

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 9-678  
 2 Annotated Code of Maryland  
 3 (2008 Replacement Volume and 2009 Supplement)

4 BY repealing and reenacting, with amendments,  
 5 Article – Labor and Employment  
 6 Section 9-679, 9-680, 9-681, 9-683, and 9-689  
 7 Annotated Code of Maryland  
 8 (2008 Replacement Volume and 2009 Supplement)

9 BY repealing  
 10 Article – Labor and Employment  
 11 Section 9-682  
 12 Annotated Code of Maryland  
 13 (2008 Replacement Volume and 2009 Supplement)

14 BY adding to  
 15 Article – Labor and Employment  
 16 Section 9-682  
 17 Annotated Code of Maryland  
 18 (2008 Replacement Volume and 2009 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Labor and Employment**

22 9-678.

23 A dependent of a covered employee who is entitled to compensation for the  
 24 death of the covered employee resulting from an accidental personal injury or  
 25 occupational disease shall be paid compensation in accordance with this Part XII of  
 26 this subtitle.

27 9-679.

28 **(A)** Except as otherwise provided in this subtitle, the Commission shall  
 29 determine all questions of [partial or total] dependency in accordance with the facts of  
 30 each case that existed:

31 (1) at the time of the occurrence of the accidental personal injury that  
 32 caused the death of the covered employee; or

33 (2) on the date of disablement from the occupational disease that  
 34 caused the death of the covered employee.

1           **(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE**  
2 **COMMISSION MAY DETERMINE THE QUESTION OF DEPENDENCY OF A CHILD OF**  
3 **A COVERED EMPLOYEE BORN AFTER:**

4           **(1) THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL**  
5 **PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE;**

6           **(2) THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL**  
7 **DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE; OR**

8           **(3) THE DEATH OF THE COVERED EMPLOYEE RESULTING FROM**  
9 **THE ACCIDENTAL PERSONAL INJURY OR OCCUPATIONAL DISEASE.**

10 9–680.

11           **[(a)]** The surviving spouse of a **DECEASED** covered employee whose death was  
12 caused by an accidental personal injury or an occupational disease is not entitled to  
13 **DEATH** benefits under this title if**[:**

14           (1) the surviving spouse deserts the covered employee for more than 1  
15 year before the time of the occurrence of the accidental personal injury or the date of  
16 disablement from the occupational disease;

17           (2) the surviving spouse deserts the covered employee at any time  
18 after the time of the occurrence of the accidental personal injury or the date of  
19 disablement from the occupational disease; or

20           **(3)]** the surviving spouse and the covered employee**[:**

21           (i)] were married after the time of the occurrence of the  
22 accidental personal injury or the date of disablement from the occupational disease**[:**  
23 and

24           (ii) do not have any dependent children**].**

25           **[(b) (1)]** Except as provided in paragraph (2) of this subsection, an  
26 individual is not entitled to compensation due to the death of a covered employee from  
27 an occupational disease if the individual became dependent on the covered employee  
28 after the beginning of the 1st compensable disability of the covered employee resulting  
29 from the occupational disease.

30           (2) The prohibition against compensation in paragraph (1) of this  
31 subsection does not apply to a child of the deceased covered employee born:

32           (i) after the beginning of the 1st compensable disability of the  
33 covered employee resulting from the occupational disease; and

1 (ii) of a marriage that existed at the beginning of the disability.]  
2 9-681.

3 (a) If there are individuals who were [wholly] dependent on a deceased  
4 covered employee at the time of death resulting from an accidental personal injury or  
5 occupational disease, the employer or its insurer shall pay death benefits in  
6 accordance with this section.

7 [(b) (1) Except as provided in paragraph (2) of this subsection, the death  
8 benefit payable under this section shall equal two-thirds of the average weekly wage  
9 of the deceased covered employee, but may not:

10 (i) exceed the State average weekly wage; or

11 (ii) be less than \$25.

12 (2) If the average weekly wage of the deceased covered employee was  
13 less than \$25 at the time of the accidental personal injury or the last injurious  
14 exposure to the hazards of the occupational disease, the weekly death benefit payable  
15 under this section shall equal the average weekly wage of the deceased covered  
16 employee.

17 (c) Except as otherwise provided in this section, the employer or its insurer  
18 shall pay the weekly death benefit:

19 (1) for the period of total dependency; or

20 (2) until \$45,000 has been paid.

21 (d) If a surviving spouse who was wholly dependent at the time of death  
22 continues to be wholly dependent after \$45,000 has been paid, the employer or its  
23 insurer shall continue to make payments to the surviving spouse at the same weekly  
24 rate during the total dependency of the surviving spouse.

25 (e) (1) If a surviving spouse who is wholly dependent at the time of death  
26 becomes wholly self-supporting before \$45,000 has been paid, the employer or its  
27 insurer shall continue to pay death benefits until \$45,000 has been paid.

28 (2) If a surviving spouse who is wholly dependent at the time of death  
29 becomes partly self-supporting, the employer or its insurer shall continue to make  
30 payments to the surviving spouse in accordance with § 9-682 of this subtitle.

31 (f) (1) Except as provided in paragraph (2) of this subsection, if a  
32 surviving spouse who is wholly dependent remarries, payment to the surviving spouse  
33 shall stop on the date of remarriage, even if \$45,000 has not been paid.

1           (2) If a surviving spouse who is wholly dependent remarries and does  
2 not have dependent children at the time of the remarriage, the employer or its insurer  
3 shall continue to make payments to the surviving spouse for 2 years after the date of  
4 the remarriage.

5           (g) If a surviving child continues to be wholly dependent after the total  
6 amount of \$45,000 has been paid, the employer or its insurer shall continue to make  
7 payments at the same weekly rate during the total dependency of the surviving child.

8           (h) Except as provided in subsection (i) of this section, if a child who is wholly  
9 dependent at the time of death becomes wholly or partly self-supporting, the employer  
10 or its insurer shall continue to pay death benefits until \$45,000 has been paid.

11           (i) (1) Except as provided in paragraphs (2) and (3) of this subsection, the  
12 employer or its insurer shall continue to make payments to, or for the benefit of, a  
13 surviving child until the child reaches 18 years of age.

14           (2) The employer or its insurer shall continue to make payments to, or  
15 for the benefit of, a child who is 18 years old or older for the period of dependency if  
16 the child is:

17                   (i) wholly dependent on the deceased covered employee; and

18                   (ii) incapable of self-support because of mental or physical  
19 disability or other sufficient reason as determined by the Commission.

20           (3) The employer or its insurer shall continue to make payments to, or  
21 for the benefit of, a child who is 18 years old or older for up to 5 years after reaching  
22 the age of 18 if:

23                   (i) the child is attending school on a full-time basis; and

24                   (ii) the school offers an educational program or a vocational  
25 training program, that is accredited or approved by the State Department of  
26 Education.

27           (j) The Commission has continuing jurisdiction to:

28                   (1) determine whether a surviving spouse or child has become wholly  
29 or partly self-supporting;

30                   (2) suspend or terminate payments of compensation; and

31                   (3) reinstate payments of compensation that have been suspended or  
32 terminated.]

1           **(B) (1) BEGINNING ON THE DATE OF DEATH OF A DECEASED**  
2 **COVERED EMPLOYEE AND CONTINUING FOR A PERIOD OF 144 MONTHS THE**  
3 **EMPLOYER OR ITS INSURER SHALL PAY DEATH BENEFITS, AS CALCULATED IN**  
4 **THIS SECTION, TO THE DEPENDENTS OF THE DECEASED COVERED EMPLOYEE.**

5           **(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,**  
6 **DEATH BENEFITS SHALL BE PAID AT THE RATE OF TWO-THIRDS OF THE**  
7 **DECEASED COVERED EMPLOYEE'S AVERAGE WEEKLY WAGE AT THE TIME OF**  
8 **THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY THAT CAUSED THE**  
9 **DEATH OF THE COVERED EMPLOYEE OR ON THE DATE OF DISABLEMENT FROM**  
10 **THE OCCUPATIONAL DISEASE THAT CAUSED THE DEATH OF THE COVERED**  
11 **EMPLOYEE, NOT TO EXCEED THE STATE AVERAGE WEEKLY WAGE.**

12           **(3) THE AVERAGE WEEKLY WAGE OF ALL DEPENDENTS AND THE**  
13 **DECEASED COVERED EMPLOYEE'S AVERAGE WEEKLY WAGE SHALL BE**  
14 **COMBINED TO DETERMINE THE FAMILY INCOME.**

15           **(4) THE DECEASED COVERED EMPLOYEE'S INCOME SHALL BE**  
16 **DIVIDED BY THE FAMILY INCOME TO DETERMINE THE PERCENTAGE OF THE**  
17 **FAMILY INCOME EARNED BY THE DECEASED COVERED EMPLOYEE.**

18           **(5) THE PERCENTAGE OF THE FAMILY INCOME EARNED BY THE**  
19 **DECEASED COVERED EMPLOYEE SHALL BE MULTIPLIED BY THE DEATH**  
20 **BENEFIT, AS CALCULATED IN PARAGRAPH (2) OF THIS SUBSECTION, TO**  
21 **DETERMINE THE AMOUNT PAYABLE, COLLECTIVELY, TO ALL DEPENDENTS.**

22           **(6) IF THE AVERAGE WEEKLY WAGE OF THE DECEASED COVERED**  
23 **EMPLOYEE WAS LESS THAN \$100 AT THE TIME OF THE OCCURRENCE OF THE**  
24 **ACCIDENTAL PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED**  
25 **EMPLOYEE OR ON THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL**  
26 **DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE, THE WEEKLY**  
27 **DEATH BENEFIT PAID UNDER THIS SECTION SHALL EQUAL THE AVERAGE**  
28 **WEEKLY WAGE OF THE DECEASED COVERED EMPLOYEE UP TO \$100 PER WEEK.**

29           **(C) (1) DEATH BENEFITS SHALL BE PAID FOR A MINIMUM OF 5 YEARS**  
30 **AFTER THE COVERED EMPLOYEE'S DEATH.**

31           **(2) SUBJECT TO SUBSECTIONS (D) THROUGH (H) OF THIS**  
32 **SECTION, PROVIDED THAT A MINIMUM OF 5 YEARS OF DEATH BENEFITS HAVE**  
33 **BEEN PAID, DEATH BENEFITS SHALL TERMINATE ON THE DATE THAT WOULD**  
34 **HAVE BEEN THE DECEASED COVERED EMPLOYEE'S 70TH BIRTHDAY.**

35           **(D) NOTWITHSTANDING THE TIME LIMITATIONS UNDER SUBSECTIONS**  
36 **(B) AND (C) OF THIS SECTION, IF A DEPENDENT SPOUSE OR DEPENDENT CHILD**

1 IS INCAPABLE OF SELF-SUPPORT BECAUSE OF A MENTAL OR PHYSICAL  
2 DISABILITY THAT PREEXISTED THE COVERED EMPLOYEE'S DEATH, DEATH  
3 BENEFITS SHALL CONTINUE FOR THE DURATION OF THE DEPENDENT'S  
4 DISABILITY.

5 (E) IF A DEPENDENT SPOUSE REMARRIES, DEATH BENEFITS SHALL  
6 TERMINATE 2 YEARS AFTER THE DATE OF REMARRIAGE.

7 (F) THE EMPLOYER OR ITS INSURER SHALL CONTINUE TO MAKE  
8 PAYMENTS TO OR FOR THE BENEFIT OF A DEPENDENT CHILD UNTIL THE CHILD  
9 REACHES 18 YEARS OLD.

10 (G) THE EMPLOYER OR ITS INSURER SHALL CONTINUE TO MAKE  
11 PAYMENTS TO, OR FOR THE BENEFIT OF, A DEPENDENT CHILD FOR UP TO 5  
12 YEARS AFTER THE CHILD REACHES 18 YEARS OLD IF:

13 (1) THE CHILD IS ATTENDING SCHOOL ON A FULL-TIME BASIS;  
14 AND

15 (2) THE SCHOOL OFFERS AN EDUCATIONAL PROGRAM OR A  
16 VOCATIONAL TRAINING PROGRAM THAT IS ACCREDITED OR APPROVED BY THE  
17 STATE DEPARTMENT OF EDUCATION.

18 (H) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
19 SUBSECTION, ALL DEPENDENTS WHO ARE NEITHER A DEPENDENT SPOUSE NOR  
20 A DEPENDENT CHILD SHALL BE ENTITLED TO NO MORE THAN A TOTAL OF  
21 \$65,000, COLLECTIVELY, AS THEIR PORTION OF THE TOTAL DEATH BENEFITS  
22 PAYABLE IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

23 (2) BEGINNING ON JANUARY 1, 2011, THE BENEFIT LIMIT UNDER  
24 PARAGRAPH (1) OF THIS SUBSECTION SHALL BE ADJUSTED ANNUALLY BY THE  
25 SAME PERCENTAGE APPLICABLE TO THE ADJUSTMENT OF THE STATE AVERAGE  
26 WEEKLY WAGE.

27 [9-682.

28 (a) The employer or its insurer shall pay a death benefit in accordance with  
29 this section if:

30 (1) there are no individuals who were wholly dependent on the  
31 deceased covered employee at the time of death, but there are individuals who were  
32 partly dependent; or

33 (2) a surviving spouse who was wholly dependent on the deceased  
34 covered employee at the time of death becomes partly self-supporting.

1           (b)   (1)   The maximum weekly death benefit payable under this section  
2 shall equal two-thirds of the average weekly wage of the deceased covered employee,  
3 but may not exceed two-thirds of the State average weekly wage.

4                   (2)   The weekly death benefit payable under this section shall be the  
5 percentage of the maximum weekly death benefit under paragraph (1) of this  
6 subsection that:

7                           (i)   the weekly earnings of the deceased covered employee bears  
8 to the combined weekly earnings of the deceased covered employee and the partly  
9 dependent individuals; and

10                           (ii)   does not exceed the maximum weekly death benefit.

11           (c)   Except as otherwise provided in this section, the employer or its insurer  
12 shall pay the weekly death benefit:

13                   (1)   for the period of partial dependency; or

14                   (2)   until \$75,000 has been paid, including any payments made during  
15 a period of total dependency under § 9-681 of this subtitle.

16           (d)   (1)   Subject to paragraph (2) of this subsection, if a surviving spouse  
17 who is partly dependent remarries and does not have dependent children at the time  
18 of the remarriage, the employer or its insurer shall make payments to the surviving  
19 spouse for 2 years after the date of the remarriage.

20                   (2)   The total of the payments made before the remarriage may not  
21 exceed \$75,000.

22           (e)   (1)   Except as provided in paragraphs (2) and (3) of this subsection, the  
23 employer or its insurer shall continue to make payments to, or for the benefit of, a  
24 surviving child until the child reaches 18 years of age.

25                   (2)   If a child who is 18 years old or older remains partly dependent on  
26 the deceased covered employee, the employer or its insurer shall continue to make  
27 payments in accordance with subsections (b) and (c) of this section.

28                   (3)   The employer or its insurer shall continue to make payments to, or  
29 for the benefit of, a child who is 18 years old or older for up to 5 years after reaching  
30 the age of 18 if:

31                           (i)   the child is attending school on a full-time basis; and

1 (ii) the school offers an educational program or a vocational  
2 training program and the program is accredited or approved by the Maryland State  
3 Department of Education.]

4 **9-682.**

5 **THE COMMISSION HAS CONTINUING JURISDICTION TO:**

6 **(1) SUSPEND, REALLOCATE, OR TERMINATE PAYMENTS OF**  
7 **COMPENSATION IN ACCORDANCE WITH THIS PART; AND**

8 **(2) REINSTATE PAYMENTS OF COMPENSATION THAT HAVE BEEN**  
9 **SUSPENDED OR TERMINATED UNDER THIS SECTION.**

10 9-683.

11 (a) If there are multiple dependents entitled to death benefits, the  
12 Commission may apportion an award of death benefits among the dependents in the  
13 manner that the Commission considers just and equitable.

14 [(b) If there are wholly and partly dependent individuals entitled to death  
15 benefits, the Commission may:

16 (1) award the death benefits to the wholly dependent individuals only;  
17 or

18 (2) apportion the award among the wholly and partly dependent  
19 individuals in the manner that the Commission considers to be fair and equitable  
20 under all of the facts and circumstances of the case.]

21 [(c) (B) (1) Death benefits shall be paid to 1 or more of the dependents  
22 of a covered employee who are entitled to death benefits, as determined by the  
23 Commission, for the benefit of all of the dependents who are entitled to death benefits.

24 (2) A dependent to whom death benefits are paid shall apply the death  
25 benefits to the use of all of the dependents who are entitled to death benefits:

26 (i) according to the respective claims of the dependents on the  
27 deceased covered employee for support; and

28 (ii) in compliance with the findings and direction of the  
29 Commission.

30 9-689.

1 (a) The employer or its insurer shall pay reasonable funeral expenses of a  
 2 deceased covered employee, not exceeding ~~[\$5,000]~~ **\$7,000**, if the covered employee  
 3 died as a result of:

4 (1) an accidental personal injury, within 7 years of the accidental  
 5 personal injury; or

6 (2) an occupational disease.

7 (b) Unless approved by the Commission, a bill for funeral expenses of more  
 8 than ~~[\$5,000]~~ **\$7,000** is void and uncollectable out of:

9 (1) workers' compensation benefits payable with respect to the  
 10 deceased covered employee; or

11 (2) personal assets of any person to whom workers' compensation  
 12 benefits are payable with respect to the deceased covered employee.

13 (c) If there are no dependents, the employer~~[,] OR its insurer[, or the Injured~~  
 14 ~~Workers' Insurance Fund, as appropriate,]~~ shall pay the expenses of the last sickness  
 15 and ~~[burial]~~ **FUNERAL EXPENSES** of the covered employee.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
 17 October 1, 2010.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.